IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.129 OF 1994

M/s.Jayantilal S.Gandhi & Co. ..Petitioners.

V/s.

Asstt. Collector of Customs & Ors. ..Respondents.

Mr.Prakash Shah i/b. C.D.Patel for petitioners.

Mr.K.R.Chaudhary for respondents.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 27TH APRIL, 2005.

P.C. :-

1. Heard counsel for the parties.

2. Factual matrix reveal that on 12/12/1991 the office of the Joint Chief Controller of Imports and Exports, New Delhi had issued a licence in the name of M/s.VAM International, New Delhi being Advance Licence No.2011330 along with a duty exemption entitlement certificate (DEEC) bearing No.013691.

3. It further appears that on 9/6/1993 the licensing authority made an endorsement on the said licence and the said DEEC making the same transferable. According to the petitioners, the said endorsement was made on the licence as per para 127(ii) of the Handbook of Procedure, 1992-97. It further appears that on 10/6/1993 the said M/s.VAM International transferred the said licence in favour of M/s.Choice Laboratories for valuable consideration, who in turn transferred the same on 6/7/1993 to M/s.Hima Dye Chem Corporation and the said M/s.Hima Dye Chem Corporation transferred the said licence to the petitioners by their letter dated 5/10/1993.

4. The petitioners urged that the Customs authorities were bound to give clearance in accordance with the endorsements made on the licence by the licensing authority and the Customs authority has no jurisdiction to go beyond or sit in appeal over the endorsement made by the licensing authority. The contention of the petitioners is that upon having acquired the said advance licence and the DEEC by transfer, the petitioners have imported Glycerine under bill of entry No.2758/48 dated 30/11/1993 and sought duty free clearance against the said advance licence and DEEC. The Customs authority declined to grant duty free clearance to the said goods against the said licence and DEEC holding that the said licence and

DEEC could not have been transferred under para 127(ii) of the Hand Book of procedure 1992-97 because the same were not issued during the policy period 1992-97 but were issued prior to 1/4/1992.

5. Being aggrieved by the above action of the customs, petitioners have filed this petition under Article 226 of the Constitution of India.

6. Petitioners are contending that under para 127 of the Import Policy read with (ii) of the Handbook of Procedure or 1992-97 wherein it was provided that the licence would be freely transferable after the export obligation have been fulfilled.

7. The learned counsel appearing for the respondents in support of his contention relied upon the circular dated 10th December, 1993 to support the action of the customs but the said circular was issued subsequent to the importation of the goods by the petitioners. In that view of the matter, reliance placed on the said circular is misplaced.

8. The contentions canvassed by the Revenue as mentioned above cannot be accepted in view of the fact that the petitioners are bonafide transferee for a

valuable consideration. If the endorsement on the licences were wrongful, then it was open for the Licensing authority to cancel the said endorsement following the law for the time being in force. Since no steps were taken to cancel the said endorsement, it was not open to the customs authorities to refuse to clear the goods. The said endorsements were very much binding on them. The view which we are taking herein is in consonance with the view taken by us in the case **Taparia Overseas (P) Ltd. V/s. Union of India & Ors.** reported in **2003(2) Bom. C.R.7**, followed in the case of **Sanjay Sanwarmal Agarwal V/s. Union of India** reported in **2004 (169) E.L.T. 261 (Bom.)**.

9. Since the issue is squarely covered by our Judgment in the case of Taparia Overseas (P) Ltd., for the reasons recorded therein, we allow the petition and make the rule absolute in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)